

MAR 27 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CORNELIUS FRANCIS GREEN,

Defendant - Appellant.

No. 07-30039

D.C. No. CR-03-00021-DWM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted March 18, 2008^{**}

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Cornelius Francis Green appeals from the district court's decision, following a limited remand under *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

2005) (en banc), that the sentence it imposed would not have been materially different had it known that the Sentencing Guidelines were advisory. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Green contends that, at sentencing, the district court violated his Sixth Amendment rights by enhancing his sentence based on its own determination of material facts in a mandatory Guidelines regime. However, we previously concluded that there was Sixth Amendment error, and, at Green's request, we remanded his initial appeal pursuant to *Ameline*. See *United States v. Green*, 202 Fed. Appx. 942 (Oct. 20, 2006) (unpublished memorandum disposition).

Green also contends that the district court's decision not to resentence him upon remand was unreasonable. We conclude that the district court's decision was reasonable because the record indicates that it "properly understood the full scope of [its] discretion in a post-*Booker* world." *United States v. Combs*, 470 F.3d 1294, 1296-97 (9th Cir. 2006).

AFFIRMED.